UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FUJITSU SEMICONDUCTOR LIMITED AND

FUJITSU SEMICONDUCTOR AMERICA, INC.

Petitioner

v.

ZOND, LLC

Patent Owner

U.S. Patent No. 6,853,142
Claims 1, 3-10, 12, 15, 17-20, 42

Inter Partes Review Case No. 2014-00866

PATENT OWNER's OPPOSITION TO MOTION FOR JOINDER

I. Introduction and Summary of Argument

Zond LLC ("Zond") is not opposed to joinder per se. It merely wants a more global solution to the enormous, unprecedented number of petitions filed against Zond, which currently total 117 and counting. Zond is clearly under siege as accused infringers file multiple requests for *inter partes review* against every one of its asserted patents. This is not what Congress had in mind when it created *inter partes* review. In fact, Congress specifically warned that the new post grant proceedings were "**not to be used** as tools **for harassment** or a means to prevent market entry **through repeated** litigation and **administrative attacks on validity** of a patent."[1] Thus, pursuant to 35 U.S.C. §315, Congress granted the Board the authority to manage such situations through stay, transfer, consolidation or termination, in part to protect patent owners from harassment and in part for the Board to manage its own workload.

For the reasons stated below, Zond respectfully submits that the proposed joinder should be denied as premature, and that any joinder should only be granted if Fujitsu, by agreement or by order of the Board, is barred from filing more petitions against the '142 patent: Fujitsu's proposal does not

[1] Excerpt from Committee Report 112-98, section "Post-Grant Proceedings."

come close to solving the current problem, because its reserves for Fujitsu the option to file additional petitions against the patent at issue (no. 6,853,142), thereby adding to the problem. Nor does it address the parallel petitions filed by Gillette, Renesas Electronics Corp. and others against the '142 patent, and the additional petitions that are expected to arrive shortly. Therefore, Fujitsu's petition and proposed joinder create only the illusion of simplification. As explained below, Fujitsu's petition and motion serve only Fujitsu's objective of procuring an immediate stay of Zond's infringement action against Fujitsu.

II. The Motion Does Not Address the Risk of Harassment by Other Petitions Contemplated By TSMC Against the '142 Patent

As explained below, Fujitsu copied Intel's petition for the sole purpose of obtaining an immediate stay of Zond's infringement litigation against Fujitsu in civil action number 1:13-cv-11634. Fujitsu therefore insists on reserving the option to file additional petitions in the coming months against the '142 patent, with its own arguments and new art.

Fujitsu is currently a defendant in an infringement suit before Judge Young. This is not the suit mentioned in Fujitsu's motion, in which Intel is the defendant before a different judge. That suit was stayed three months ago in view of Intel's petitions for *inter partes* review. In the infringement action against Fujitsu, Judge Young initially denied Fujitsu's motion to stay because

Fujitsu had at that time not filed any petition for *inter partes review*: "The motion to stay is denied as premature."[2] Judge Young made it quite clear that if Fujitsu wanted a stay, it would have to file its own petitions:

> THE COURT: So the ruling's the same, it's denied because it is premature. Once they notify the court that it's filed – once it's filed then --- as soon as that happens, my stay will go into effect …
>
> MR FITZPATRICK: The IPRs are already pending. Intel has already filed IPRs.
>
> THE COURT: You're not Intel.[3]

Judge Young said that in the meantime, he was prepared to rule on Markman issues[4] and take the case to trial and verdict by December 2014.[5]

And so the flood of copied petitions began. But the present petition was copied is just for purposes of procuring a stay. Fujitsu wants the option to file its own petitions against the '142 with new arguments and art in the coming months. For this reason, Fujitsu's proposal to join the Intel proceedings but

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[2] Ex. B, Hearing Transcript, page 11.

[3] Ex. B, Hearing Transcript, page 14, 17.

[4] Ex. B, Hearing Transcript, page 6, 18.

[5] Ex. B, Hearing Transcript, page 10.

still reserve the option to file even more petitions against Zond, is an abuse of the IPR proceedings that Congress urged the patent office to address with its expanded procedural authority:

> [T]he changes made … are **not to be used** as tools **for harassment** or a means to prevent market entry **through repeated** litigation and **administrative attacks on validity** of a patent. Doing so would frustrate the purpose of the section as providing quick and cost effective alternatives to litigation…..as such, **the committee intends for the USPTO to address potential abuses and current inefficiencies under its expanded procedural authority**.[6]

Accordingly, joinder should only be allowed if Fujitsu is precluded from filing additional petitions against the same patent, and if any such joinder takes into consideration the many other petitions that have been filed against the '142 patent as explained below.

III. The Motion Does Not Consider Other Petitions That have Been Filed Against the'142 Patent

The current motion does not address the petitions being filed by Gillette, Renesas Electronics Corp. and many other parties against the '142 patent. Unless these parties are included in the joinder, little is accomplished. If these parties are not taken into consideration, Zond will be prejudiced if they will not agree to maintain the same schedule or to streamline briefing and

[6] Excerpt from Committee Report 112-98 , section "Post-Grant Proceedings."

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